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IN THE

Supreme Court of the United States

October Term, 1965.

No. 1166

THOMAS P. SHEARER,
Petitioner,

v.

MARY E. SHEARER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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Petitioner, Thomas P. Shearer, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above case on December 30, 1965.

Citations to Opinions Below.

The Findings of Fact and Conclusions of Law of the District Court of the Virgin Islands, together with the Decree of the Court, are set forth in the Appendix hereto, pages 1a through 5a. The opinion of the Court of Appeals is printed in the Appendix hereto, pages 6a through 26a and is reported in 353 F. 2d —; 5 V. I. —. The Judgment of the Court of Appeals is printed in the Appendix hereto, pages 27a-28a.

Jurisdiction.

The Judgment of the Court of Appeals was entered on December 30, 1965. No petition for rehearing was filed. The case was first argued before the Court of Appeals sitting in the Virgin Islands on January 26, 1965, and by order of the Court dated November 9, 1965, reargued en banc on December 9, 1965, in Philadelphia. The jurisdiction of this Court is invoked under Title 28 U. S. C. 1254(1).

Question Presented.

1. Whether under Rule 52 of the Federal Rules of Civil Procedure the United States Court of Appeals is bound by the trial judge's findings of fact where such findings are amply supported by the evidence.

Statute Involved.

The statute involved is Title 16 of the Virgin Islands Code, Section 104(a)(8).

Title 16, Section 104(a)(8)

"§ 104. Divorce

"(a) A legal separation or the dissolution of the marriage contract may be declared at the instance of the injured party for any of the following causes—

. . . .

"(8) incompatibility of temperament."

Statement.

Jurisdiction of the District Court of the Virgin Islands was invoked because the petitioner was a resident and domiciliary of the Territory of the Virgin Islands.

The petitioner, a resident of the Virgin Islands since January 15, 1960, filed a complaint for divorce on July 25,

1963, against respondent, who was at that time and still is a resident and domiciliary of the State of Michigan. The ground alleged was incompatibility of temperament. A trial on the merits, at which respondent was personally present and represented by counsel, was had on July 8, 1964.

On July 10, 1964, the trial court made Findings of Fact and Conclusions of Law and entered a Decree of Divorce Absolute in favor of the petitioner.

The Court below reversed the Decree of July 10, 1964, and remanded the cause with instructions to dismiss the complaint on the grounds that the Findings of Fact were clearly erroneous. The respondent's counsel at the reargument en banc acknowledged that there was sufficient evidence to show incompatibility and maintained that he was attacking the decree on the basis that the petitioner was the wrongdoer.

Reasons for Granting This Writ.

1. It is clear that the sole reason for reversing the decision of the District Court was because the Court of Appeals found that the Findings of Fact were clearly erroneous. It is well settled that Findings of Fact are not clearly erroneous unless unsupported by substantial evidence or induced by an erroneous view of the law. *Fleming v. Palmer,* C. C. A. 1st, 1941, 123 F. 2d 749, certiorari denied 62 S. Ct. 942, 316 U. S. 662, 86 L. Ed. 1739.

2. The fact that the appellate court might have ruled differently is not sufficient justification for reversing or setting aside the findings of the trial court. *U.S. v. National Ass'n of Real Estate Bds.,* 70 S. Ct. 711, 339 U. S. 485, 98 L. Ed. 1007; *Stickler v. Pfister Associated Growers, Inc.,* C. A. 6th, 1963, 319 F. 2d 788, 790. *Indemnity Ins. Co. of North America v. Pioneer Val. Savings Bank,* C. A. 8th, 1965, 343 F. 2d 631, 643-644.

3. As is noted in the dissent, at the reargument en banc, ". . . the wife's counsel acknowledged that there